

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the matter of the Nebraska)	Application No. C-3535 /
Public Service Commission, on)	PI-111
its own motion, seeking to)	
establish procedures for the)	
treatment of commercial)	ORDER OPENING DOCKET
agreements not subject to the)	AND SEEKING COMMENT
filing requirements of § 252 of)	
the Telecommunications Act of 1996)	

ALLTEL NEBRASKA, INC'S INITIAL COMMENTS

Alltel Nebraska, Inc. ("Alltel") submits its initial comments as invited by the Commission's Order opening Docket and Seeking Comment (the "Order") dated January 18, 2006 as follows:

Introduction

Since the Telecommunications Act of 1996 ("the Act") was passed, the FCC has removed certain unbundled network elements ("UNEs") from the list of required UNEs that must be provided pursuant to Section 251 of the Act. However, in certain instances incumbent local exchange carriers have chosen to continue to provide such declassified UNEs to competitive carriers on a commercial basis. As a result, the Commission has had to review these commercial agreements to determine whether they should be filed for approval in accordance with Section 252(e)(1) of the Telecommunications Act of 1996. In its Order opening this docket, the Commission acknowledges "that certain

commercial agreements may fall outside of the FCC's interpretation of the Act's filing requirements.”¹

The Commission now seeks to develop rules to provide carriers with an acknowledgement of which agreements do not fall within the scope of Section 252 and to ensure the consistent treatment of those agreements. Additionally, the Commission is considering addressing its process for resolving carrier disputes related to the applicability of the Commission's jurisdiction to approve an agreement.

Background

The Act requires only those agreements containing certain ongoing Section 251 obligations to be submitted to state commissions for approval or rejection. Therefore, it is reasonable to conclude that all other agreements between incumbent local exchange carriers and competitive carriers should not be subject to the filing requirements set forth in the Act.

On April 23, 2003, Qwest Communications, Inc. filed a Petition for Declaratory Ruling with the FCC seeking to determine the “scope of the mandatory filing requirement set forth in section 252(a)(1) of [the Act].”² Specifically, Qwest sought guidance from the FCC about the types of negotiated agreements between incumbent and competitive LECs that should be subject to

¹ *In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to establish procedures for the treatment of commercial agreements not subject to the filing requirements of §252 of the Telecommunications Act of 1996*, Order Opening Docket and Seeking Comment, Application No. C-3535/PI-111 (entered January 18, 2006) at 1 (“the Order”).

² *Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, WC Docket No. 02-89, FCC 02-276 (released October 4, 2002) at ¶ 1 (“FCC Order”).

the Act's filing requirements.³ Qwest asserted that one of the categories of arrangements which are not subject to state commission approval pursuant to Section 252 of the Act are "network elements that have been removed from the national list of elements subject to mandatory unbundling".⁴ In its response to Qwest's petition, the FCC concluded that:

"We therefore disagree with the parties that advocate the filing of *all* agreements between an incumbent LEC and a requesting carrier. See Office of the New Mexico Attorney General and the Iowa Office of Consumer Advocate Comments at 5. Instead we find that only those agreements that contain an ongoing obligation relating to section 251(b) or (c) must be filed under 252(a)(1)."⁵

The FCC's conclusion is consistent with the Act's requirements and recognizes that this standard balances the need of CLECs to obtain interconnection pursuant to Section 252(i) and removal of regulatory impediments that may otherwise disincent the commercial negotiations between incumbent and competitive LECs which were encouraged by the FCC.⁶

Alltel's Position

Alltel agrees with the FCC that only those agreements containing ongoing obligations related to Section 251(b) or (c) of the Act should be required to be submitted to the Commission for approval. Therefore, Alltel is not opposed to the Commission initiating a rulemaking proceeding to develop rules that (1) will provide carriers with a clear understanding of whether those agreements should

³ FCC Order at ¶ 1.

⁴ Id. ¶ 3.

⁵ Id. ¶ 8, footnote 26.

⁶ Id.

be subject to approval or rejection by the Commission in accordance with Section 252(e) of the Act and (2) would incorporate in the rulemaking process a forum which would address disputes related to the applicability of the Commission's jurisdiction over these type of agreements. Furthermore, Alltel opposes the development of any rules that would require the filing of agreements that do *not* contain ongoing obligations required by Section 251(b) or (c) of the Act.

Dated April 13, 2006

Respectfully submitted,

Alltel Nebraska, Inc.

By: Steve Meradith